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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/711,710	09/30/2004	Robert Africa	188444/US/2	5709
20686 7590 04/14/2009 DORSEY & WHITNEY, LLP INTELLECTUAL PROPERTY DEPARTMENT 370 SEVENTEENTH STREET SUITE 4700 DENVER, CO 80202-5647				
EXAMINER				
HOEY, ALISSA L				
ART UNIT		PAPER NUMBER		
3765				
MAIL DATE		DELIVERY MODE		
04/14/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/711,710

**Applicant(s)**

AFRICA ET AL.

**Examiner**

Alissa L. Hoey

**Art Unit**

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 February 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 13-19, 50 and 57 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13-19, 50 and 57 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 02/09/09 has been entered.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 13-15, 17-19, 50 and 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aldrich (US 6,423,135) in view of DeBaene (US 5,038,408).

In regard to claim 13, Aldrich teaches a chamois, comprising:

a first cloth layer; the first cloth layer being relatively elastic;

a second cloth layer; the second cloth layer being relatively elastic and having at least one relatively inelastic portion; a first continuous foam layer;

the first continuous foam layer coupled to the first cloth layer;

the first continuous foam layer located between the first cloth layer and the second cloth layer and contacting the first cloth layer and the second cloth layer;

the first continuous foam layer being relatively elastic such that the chamois stretches; at least one pad coupled to the first continuous foam layer; the at least one pad positioned between the first continuous foam layer and the second cloth layer; the at least one pad contacting the first continuous foam layer and contacting the second cloth layer; the first continuous foam layer interposed between the first cloth layer and the at least one pad to prevent contact between the at least one foam pad and the first cloth layer; and including a garment facing side contacting a body facing side of the first foam layer and a body facing side contacting a garment facing side of the second cloth layer; the at least one pad substantially aligned with the at least one relatively inelastic portion of the second cloth layer, such that the at least one pad is inhibited from stretching.

However, Aldrich fails to teach the pad being foam.

DeBaene teaches a knee pad that is made out of a foam material.

It would have been obvious to have provided the pad of Aldrich with the foam pad of DeBaene, since the pad of Aldrich provided with the foam pad in place of the cotton pad, would provide a resistant, but flexible pad structure that would be more durable than the cotton pad.

In regard to claim 14, DeBaene teaches the at least one foam pad is relatively inelastic (see column 3, line s13-18).

In regard to claim 15, DeBaene teaches wherein the at least one foam pad is elastic (see column 3, lines 13-18).

In regard to claim 17, Aldrich teaches wherein the first cloth layer comprises a

relatively inelastic portion substantially aligned with the at least one foam pad (inelastic portion is the portion that is stitched: see 51 of figure 2).

In regard to claim 18, Aldrich and DeBaene teaches two different foam layers, one being a foam layer and one being a foam pad, respectively. The foam layer and the foam pad are made from two different foam materials and therefore would have different densities.

With respect to the foam pad being relatively denser than the elastic first continuous foam layer, it would have been obvious to have the pad and the foam layer having any densities, because as long as there are different densities provided in the layers the specification does provide any criticality for the foam pad having to be denser than the foam layer, only for the different layers to be different densities.

In regard to claim 19, Aldrich teaches the at least one foam pad comprising a single density.

It would have been obvious to have had one of the at least one foam pad having a single density, since the multiple densities are directed to other layers and not just one layer. Therefore, as long as the one layer of foam padding has a density, it reads on the limitation as claimed and disclosed.

In regard to claim 50, Aldrich teaches wherein the chamois is flexible (column 2, lines 36-41).

In regard to claim 57, Aldrich teaches the first continuous foam layer coupled to the second cloth layer (see figure 1).

4. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Aldrich in view of DeBaene as applied to claim 13 above, and further in view of Garneau (US 2005/0210570).

Aldrich and DeBaene fail to teach the second cloth layer containing an anti-microbial material.

In regard to claim 16, Garneau teaches wherein at least the second cloth layer contains an anti-microbial material (paragraph 0047).

It would have been obvious to have provided the protective pad of Aldrich and DeBaene with the anti-microbial material of Garneau, since the protective pad of Aldrich and DeBaene provided with an anti-microbial material would provide a pad structure that inhibits the growth of bacteria, preventing infection to the user's skin.

### ***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure and can be found cited in PTO-892 form submitted herewith.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa L. Hoey whose telephone number is (571) 272-4985. The examiner can normally be reached on M-F (8:00-5:30)Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on (571) 272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alissa L. Hoey/  
Primary Examiner, Art Unit 3765